

payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. A licensee may not switch its payment plan to a more favorable plan.

(d) Unjust enrichment payment: bidding credits.

(1) A licensee that utilizes a bidding credit, and that during the initial term seeks to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a bidding credit, will be required to reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license was granted, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to make any ownership change that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding credit for which the restructured licensee would qualify), plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer.

(2) Payment Schedule.

(i) The amount of payments made pursuant to paragraph (d)(1) of this section will be reduced over time as follows:

(A) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or in the case of very small businesses transferring to small businesses, 100 percent of the difference between the bidding credit received by the former and the bidding credit for which the latter is eligible);

(B) A transfer in year 3 of the license term will result in a forfeiture of 75 percent of the value of the bidding credit;

(C) A transfer in year 4 of the license term will result in a forfeiture of 50 percent of the value of the bidding credit;

(D) A transfer in year 5 of the license term will result in a forfeiture of 25 percent of the value of the bidding credit; and

(E) for a transfer in year 6 or thereafter, there will be no payment.

(ii) These payments will have to be paid to the United States Treasury as a condition of approval of the assignment, transfer, or ownership change.

(e) Unjust Enrichment: Partitioning and Disaggregation.

(1) Installment Payments. Licensees making installment payments, that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for installment payments, will be subject to the provisions concerning unjust enrichment as set forth in this section.

(2) Bidding Credits. Licensees that received a bidding credit that partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in this section.

(3) Apportioning Unjust Enrichment Payments. Unjust enrichment payments for partitioned license areas shall be calculated based upon the ratio of the population of the partitioned license area to the overall population of the license area and by utilizing the most recent census data. Unjust enrichment payments for disaggregated spectrum shall be calculated based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the licensee.

10. Section 1.2112 is added to read as follows:

**§ 1.2112 Ownership disclosure requirements for short- and long-form applications.**

(a) Each application for a license or authorization or for consent to assign or transfer control of a license or authorization shall disclose fully the real party or parties in interest and must include in an exhibit the following information:

(1) A list of any FCC-regulated business 10 percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant;

(2) A list of any party holding a 10 percent or greater interest in the applicant, including the specific amount of the interest;

(3) A list of any party holding a 10 percent or greater interest in any entity holding or applying for any FCC-regulated business in which a 10 percent or more interest is held by another party which holds a 10 percent or more interest in the applicant (e.g., If company A owns 10 percent of Company B (the applicant) and 10 percent of Company C then Companies A and C must be listed on Company B's application;

(4) A list of the names, addresses, and citizenship of any party holding 10 percent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held;

(5) A list of the names, addresses, and citizenship of all controlling interests of the applicants, as set forth in § 1.2110;

(6) In the case of a general partnerships, the name, address and citizenship of each partner, and the share or interest participation in the partnership;

(7) In the case of a limited partnerships, the name, address and citizenship of each limited partner whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses);

(8) In the case of a limited liability corporation, the name, address and citizenship of each of its members; and

(9) A list of all parties holding indirect ownership interests in the applicant, as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated and reported as if it were a 100 percent interest.

(b) In addition to the information required under paragraph (a) of this section, each applicant for a license or authorization claiming status as a small business shall, as an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant and its affiliates, the applicant's attributable investors, affiliates of its attributable investors, and, if a consortium of small businesses, the members comprising the consortium;

(2) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of de facto and de jure control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

11. Section 1.2113 is added to read as follows:

**Sec. 1.2113 Construction prior to grant of application.**

Subject to the provisions of this section, applicants for licenses awarded by competitive bidding may construct facilities to provide service prior to grant of their applications, but must not operate such facilities until the FCC grants an authorization. If the conditions stated in this section are not met, applicants must not begin to construct facilities for licenses subject to competitive bidding.

(a) When applicants may begin construction. An applicant may begin construction of a facility upon release of the Public Notice listing the post-auction long-form application for that facility as acceptable for filing.

(b) Notification to stop. If the FCC for any reason determines that construction should not be started or should be stopped while an application is pending, and so notifies the applicant, orally (followed by written confirmation) or in writing, the applicant must not begin construction or, if construction has begun, must stop construction immediately.

(c) Assumption of risk. Applicants that begin construction pursuant to this section before receiving an authorization do so at their own risk and have no recourse against the United States for any losses resulting from:

- (1) Applications that are not granted;
- (2) Errors or delays in issuing Public Notices;
- (3) Having to alter, relocate or dismantle the facility; or
- (4) Incurring whatever costs may be necessary to bring the facility into compliance with applicable laws, or FCC rules and orders.

(d) Conditions. Except as indicated, all pre-grant construction is subject to the following conditions:

- (1) The application does not include a request for a waiver of one or more FCC rules;
- (2) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1), filed a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, PRB, Support Services Branch, Gettysburg, PA 17325;
- (3) The applicant has indicated in the application that the proposed facility would not have a significant environmental effect, in accordance with §§ 1.1301 through 1.1319;
- (4) Under applicable international agreements and rules in this part, individual coordination of the proposed channel assignment(s) with a foreign administration is not required; and
- (5) Any service-specific restrictions not listed herein.

## PART 21 - DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554, unless otherwise noted.

2. Section 21.959(a)(2) is revised to read as follows:

**§ 21.959 Withdrawal, default and disqualification.**

\*\*\*\*\*

(a) \*\*\*

(2) Default or disqualification after close of auction. See § 1.2104 (g)(2) of this chapter.

\*\*\*\*\*

3. Section 21.960(b)(4) and (d)(1) are revised to read as follows:

**§ 21.960 Designated entity provisions for MDS.**

\*\*\*\*\*

(b) \*\*\*

(4) Conditions and obligations. See § 1.2110(f)(4) of this chapter.

\*\*\*\*\*

(d)\*\*\*

(1) Unjust enrichment. See § 1.2111 of this chapter.

\*\*\*\*\*

**PART 24 - PERSONAL COMMUNICATIONS SERVICES**

1. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 301, 302, 303, and 332, unless otherwise noted.

2. Section 24.304(a)(2) is revised to read as follows:

**§ 24.304 Withdrawal, default and disqualification penalties.**

(a) \*\*\*

(2) Default or disqualification after close of auction. See § 1.2104(g)(2) of this chapter.

\* \* \* \* \*

3. Section 24.309 is amended by revising paragraphs (b) and (f) to read as follows:

**§ 24.309 Designated entities**

\* \* \* \* \*

(b) Designated entities will be eligible for certain special narrowband PCS provisions as follows:

(1) Installment payments.

(i) Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bids on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in § 1.2110(g) of this chapter.

(ii) Businesses owned by members of minority groups and women that are winning bidders for the regional licenses indicated by an (\*\*) in § 24.129 may pay the full amount of their winning bids (less the applicable bidding credit and down payment) in installments with

(A) Interest imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent;

(B) Interest-only payments for the first two years; and

(C) Principal and interest payments amortized over the remaining eight years of the license.

(2) Bidding Credits. Businesses owned by member of minority groups and women, including small businesses owned by members of minority groups and women, will be eligible for a twenty-five (25) percent bidding credit when bidding on the following licenses:

(i) The nationwide licenses on Channel 5, Channel 8 and Channel 11; and

(ii) All MTA licenses on Channel 19, Channel 22, Channel 24; and

(iii) All BTA licenses on Channel 26. This bidding credit will reduce by 25 percent the bid price that businesses owned by members of minority groups and women will be required to pay to obtain a license. Businesses owned by women and/or minorities, including small businesses owned by women and/or minorities will be eligible for a forty (40) percent bidding credit when bidding on all regional licenses on Channel 13 and Channel 17. In § 24.129, the licenses that will be eligible for 25 percent bidding credits are indicated by an (\*); the licenses that will be eligible for 40 percent bidding credits are indicated by an (\*\*).

\*\*\*\*\*

(f) Unjust Enrichment. Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the unjust enrichment provisions contained in § 1.2111 of this chapter.

5. Section 24.704(a)(2) is revised to read as follows:

**§ 24.704 Withdrawal, default and disqualification penalties.**

(a) \* \* \*

(2) Default or disqualification after close of auction. See § 1.2104(g)(2) of this chapter.

\* \* \* \* \*

7. Section 24.711 is amended by revising paragraph (b) to read as follows:

**§ 24.711 Upfront payments, down payments and installment payments for licenses for frequency Blocks C.**

\* \* \* \* \*

(b) Installment Payments. Each eligible licensee of frequency Block C or F may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(g) of this Chapter and under the following terms:

(1) For an eligible licensee with gross revenues exceeding \$75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(2) For an eligible licensee with gross revenues not exceeding \$75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(3) For an eligible licensee that qualifies as a Small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(4) For an eligible licensee that qualifies as a business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury

obligations applicable on the date the license is granted; payments shall include interest only for the first three years and payments of interest and principal amortized over the remaining seven years of the license term.

(5) For an eligible licensee that qualifies as a small business owned by members of minority groups and/or women or as a consortium of small business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

(c) Unjust Enrichment. See § 1.2111 of this chapter.

8. Section 24.712 is amended by revising paragraph (d) to read as follows:

**§ 24.712 Bidding credits for licenses for frequency Blocks C.**

\* \* \* \* \*

(d) Unjust Enrichment. See § 1.2111 of this chapter.

9. Section 24.716 is amended by revising paragraph (c) and (d) to read as follows:

**§ 24.716 Upfront payments, down payments, and installment payments for licenses for frequency Block F.**

\* \* \* \* \*

(c) Late Installment Payments. See § 1.2110(f)(4) of this chapter.

(d) Unjust Enrichment. See § 1.2111 of this chapter.

10. Section 24.717 is amended by revising paragraph (c) to read as follows:

**§ 24. 717 Bidding credits for licenses for frequency Block F.**

\* \* \* \* \*

(c) Unjust Enrichment. See § 1.2111 of this chapter.



**PART 27 - WIRELESS COMMUNICATIONS SERVICE**

1. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 27.203 is amended by revising paragraph (b) to read as follows:

**§ 27.203 Withdrawal, default and disqualification payments.**

\* \* \* \* \*

- (b) Default or disqualification after close of auction. See § 1.2104(g)(2) of this chapter.

2. Section 27.209 is amended by revising paragraph (d) to read as follows:

**§ 27.209 Designated entities; bidding credits; unjust enrichment.**

\* \* \* \* \*

- (d) Unjust Enrichment. See § 1.2111 of this chapter.

**PART 90 - PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 251-2, 303 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251-2, 303 309 and 332, unless otherwise noted.

2. Section 90.805(c) is revised to read as follows:

**§ 90.805 Withdrawal, default and disqualification payments.**

\*\*\*\*\*

- (c) Default or disqualification after close of auction. See § 1.2104 (g)(2) of this chapter.

\*\*\*\*\*

3. Section 90.812 (a) and (b) are revised to read as follows:

**§ 90.812 Installment payments for licensees won by small businesses.**

- (a) Installment Payments. See § 1.2110(f)(4) of this chapter.
- (b) Unjust Enrichment. See § 1.2111(c) of this chapter.

**PART 95 - PERSONAL RADIO SERVICES**

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.816(c)(6) and (e) are amended to read as follows:

**§ 95.816 Competitive bidding proceedings.**

\*\*\*\*\*

- (c) \*\*\*

- (6) Default or disqualification. See § 1.2104 (g)(2) of this Chapter.

\*\*\*\*\*

- (e) Unjust Enrichment. See § 1.2111 of this Chapter.

\*\*\*\*\*

## APPENDIX E Proposed Rules

Part 1 of Title 47 of the Code of Federal Regulations is proposed to read as follows:

### PART 1 - PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j), unless otherwise noted.

2. Section 1.2110 is revised to read as follows:

#### § 1.2110 Designated entities.

(a) \*\*\*

\*\*\*\*\*

(b) Eligibility for small business provisions.

(1) Size Attribution. The gross revenues of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business under this section. Applicants seeking status as a small business under this section must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates.

(2) Aggregation of Affiliate Interests. Persons or entities that hold interest in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(d) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

Example 1. ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person or entity.

Example 2. ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(3) Exceptions.

(i) Small business consortia. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues and total assets of each small business consortium member

shall not be aggregated. Each small business consortium member must constitute a separate and distinct legal entity to qualify.

(ii) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(c) Definitions.

(1) Small businesses. The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) Controlling interest.

(i) For purposes of this section, controlling interest includes individuals or entities with both de jure and de facto control of the applicant. De jure control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. De facto control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains de facto control of the applicant:

(A) the entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) the entity plays an integral role in management decisions.

(ii) Calculation of Certain Interests.

(A) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2)(ii)(B) of this section.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person or its affiliate pursuant to paragraph (c)(5) of this subsection, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence

- (i) The nature or types of services offered by such an applicant or licensee;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

- (i) The nature or types of services offered by such an applicant or licensee;
- (ii) The terms upon which such services are offered; or
- (iii) The prices charged for such services.

(3) Businesses owned by members of minority groups and/or women. Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least greater than 50 percent equity ownership and, in the case of a corporate applicant, have a greater than 50 percent voting interest. For applicants that are partnerships, every general partner must be either a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

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Amendment of Part 1 of the Commission's Rules -- Competitive  
Bidding Proceeding, Third Report and Order and  
Second Further Notice of Proposed Rule Making

STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH

By today's action, the Commission has consolidated and streamlined its spectrum auction rules. At the same time, and in order to provide existing licensees and future bidders additional regulatory certainty and fairness, the Commission has endeavored to harmonize its auction rules among the various spectrum-based services to which these rules apply. I believe the benefits of these changes will outweigh their costs. Accordingly, I support the item.

We did not, however, undertake the more difficult task of revamping our entire auction system. In my view, this proceeding (the latest round of which began nearly a year ago) should have elicited more thorough public comment on how the system could be improved.

For example, with a more complete record, we could have used this opportunity to permanently discard rules -- such as our ill-fated installment payment system -- that thrust the Commission into the role of unwitting (and unqualified) banker to our licensees. I find it incredibly inefficient and unsound policy for a federal government agency, especially one with no banking expertise, to substitute itself and its judgments for those of private financial institutions and markets.

In the end, however, we have respected the requirements of the law and, where appropriate, we have recognized the critically important role of all designated entities under Section 309(j) of the Act, including small businesses and rural telephone companies, in our economy and society. I believe that, within the bounds of the law, we must be faithful to companies such as these, just as companies in competitive markets must be faithful to their customers. As regulators, the FCC's fidelity can be measured in part by how little burden we force industry and consumers to shoulder. By adding certainty and fairness to our auction rules, today we have lifted some part of the burden of regulation.

**Statement of Commissioner Gloria Tristani  
on the Adoption the Third Report and Order and  
Second Further Proposed Rulemaking on the Amendment of  
the Commission's Part 1 Auction Rules**

It is fitting that we streamline, simplify and standardize our auction rules. These rules reduce the burden for applicants and licensees by adopting, where appropriate, uniform rules that will apply regardless of the service to be provided. But we also retain the flexibility to tailor some provisions to individual services. The guidance these rules provide will serve the public and the Commission alike by easing, and speeding, the auctions rulemaking process.

I wish to note a vital issue that remains. Today we affirm our commitment to eliminate barriers to entry and to ensure that minorities and women have the opportunity to participate in the provision of spectrum-based services. Under Section 257, we have already initiated several studies in the broadcast area, and we will soon initiate a study concerning participation and barriers to entry in the auctions context.

To date, minority and women-owned businesses have benefitted from the small business provisions we have offered -- installment payments, bidding credits and entrepreneurs blocks. Thus, of the more than four thousand licenses awarded by auction, approximately 11 percent have been awarded to minority-owned businesses and 11 percent to women -owned businesses. However, in light of our decision today to suspend use of installment payments for the foreseeable future, we must pay attention to the unique obstacles facing minorities and women as they seek to participate in the telecommunications revolution. In the further notice, we seek comment on these obstacles and on what remedies we might offer to facilitate widespread participation. I will be especially interested in the comments and proposals we receive to fulfill our statutory obligations.